

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Natnari Linwong	Team: Team # 2	CCRB Case #: 201014129	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/10/2010 6:56 PM	Location of Incident: § 87(2)(b)	Precinct: 41	18 Mo. SOL 4/10/2012	EO SOL 4/10/2012	
Date/Time CV Reported Sun, 10/10/2010 7:03 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/14/2010 2:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Lawrence Sanchez	26252	942502	041 PCT
2. POM Angel Vasquez	03533	918436	041 PCT
3. POM Gaetano Fundaro	20112	911668	041 PCT
4. Officers			
5. DT2 John Capobianco	04534	879415	041 PCT
6. SGT Michael Gibbs	04336	906330	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Emilio Estevez	13502	944542	041 PCT
2. SGT Edgar Padilla	02988	895127	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DT2 John Capobianco	Abuse: Detective John Capobianco stopped § 87(2)(b)	
B.POM Angel Vasquez	Abuse: Officer Angel Vasquez stopped § 87(2)(b)	
C. Officers	Force: Officers used physical force against § 87(2)(b)	
D. Officers	Force: Officers used pepper spray against § 87(2)(b)	
E.SGT Michael Gibbs	Force: Sergeant Michael Gibbs used force against § 87(2)(b)	
F. Officers	Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)	
G.POM Lawrence Sanchez	Force: Officer Lawrence Sanchez struck § 87(2)(b) with his asp.	
H.POM Lawrence Sanchez	Discourtesy: Officer Lawrence Sanchez spoke rudely and/or discourteously to § 87(2)(b)	
I.DT2 John Capobianco	Discourtesy: Detective John Capobianco spoke rudely and/or discourteously to § 87(2)(b)	
J.POM Gaetano Fundaro	Discourtesy: Officer Gaetano Fundaro spoke rudely and/or discourteously to § 87(2)(b) and § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K. Officers	Discourtesy: Officers spoke rudely and/or obscenely to § 87(2)(b), § 87(2)(b), and § 87(2)(b)	

### Case Summary

On October 10, 2010, § 87(2)(b) filed a complaint with the IAB (log #10-50820). On October 14, 2010, the complaint was referred to the CCRB (encl. 2A-E).

On October 10, 2010, around 7:00 p.m., § 87(2)(b) was questioned by police officers about a missing motorbike at § 87(2)(b) in the Bronx. A crowd gathered which included § 87(2)(b) mother, § 87(2)(b) and his stepfather, § 87(2)(b) and § 87(2)(b) were arrested, taken to the 41<sup>st</sup> Precinct, and subsequently released to their parents. The following allegations resulted from the incident:

- **Allegation A – Abuse of authority: Detective John Capobianco stopped** § 87(2)(b)
- **Allegation B – Abuse of authority: Officer Angel Vasquez stopped** § 87(2)(b)  
§ 87(2)(g)
- **Allegation C – Force: Officers used physical force against** § 87(2)(b)
- **Allegation D – Force: Officers used pepper spray against** § 87(2)(b)  
§ 87(2)(g)
- **Allegation E – Force: Sergeant Michael Gibbs used physical force against** § 87(2)(b)
- **Allegation F – Force: Officers used physical force against** § 87(2)(b) **and** § 87(2)(b)  
§ 87(2)(g)
- **Allegation G – Force: Officer Lawrence Sanchez used physical force against** § 87(2)(b)  
§ 87(2)(g)
- **Allegation H – Discourtesy: Officer Lawrence Sanchez spoke rudely and/or discourteously to** § 87(2)(b)
- **Allegation I – Discourtesy: Detective John Capobianco spoke rudely and/or discourteously to** § 87(2)(b)
- **Allegation J – Discourtesy: Officer Gaetano Fundaro spoke rudely and/or discourteously to** § 87(2)(b) **and** § 87(2)(b)  
§ 87(2)(g)
- **Allegation K – Discourtesy: Officers spoke rudely and/or discourteously to** § 87(2)(b)  
§ 87(2)(b), § 87(2)(b) **and** § 87(2)(b) § 87(2)(g)

### Results of Investigation

#### Civilian Statements

**Victim:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) Hispanic male, 5'7" tall and 111 lbs. with black hair and brown eyes. § 87(2)(b)

### CCRB Testimony

On October 22, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 3A-G).

On October 10, 2010, around 7:00 p.m., § 87(2)(b) went to his friend's apartment at § 87(2)(b); he then left and started walking down § 87(2)(b) towards his house at § 87(2)(b). Two white male police officers were in a vehicle parked at the corner of § 87(2)(b); these officers stopped him.

§ 87(2)(b) described one of the officers as short with gray hair and glasses; this officer was identified through investigation as Detective John Capobianco. § 87(2)(b) described the other officer as tall and bald. Sergeant Michael Gibbs fits § 87(2)(b) description and arrived at the scene later, but the investigation determined that Officer Angel Vasquez was the officer who initially approached § 87(2)(b) with Detective Capobianco. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Both officers asked § 87(2)(b) questions; Detective Capobianco was polite, but PO2 questioned § 87(2)(b) in a rude way and cursed at him. PO2 asked § 87(2)(b) if he knew where “the fucking bike” was and whether he hid the bike; § 87(2)(b) did not know what the officer was talking about. He did not respond because the officer was speaking to him rudely.

Detective Capobianco asked § 87(2)(b) for his ID. He responded that he had left it at home. The officers asked him for his date of birth and did not believe him when he gave it to them; they told him he looked nineteen. The officers called for backup; ultimately, five or six cars arrived at the scene. At least ten black officers and eight white officers were present, all male and in uniform. People from the neighborhood also began to arrive and watch the scene; at least twenty civilians were present.

At this point, a friend of § 87(2)(b) named § 87(2)(b) passed by with his girlfriend, § 87(2)(b). They did not say anything to the officers or to § 87(2)(b) and did not physically interfere. One of the officers got out of his car and started cursing at the people gathered around, telling them to get off the southeast corner of the intersection, where § 87(2)(b) was. As § 87(2)(b) tried to leave the corner, one of the officers grabbed him by his neck and pushed him against the wall of § 87(2)(b) about six buildings away from where § 87(2)(b) was.

§ 87(2)(b) saw officers beat up § 87(2)(b) and § 87(2)(b) was on the ground and officers were punching him in the face and ribs. § 87(2)(b) was screaming at the officers to get off § 87(2)(b). Officers pushed her to the ground and dragged her by her arms to a car. § 87(2)(b) could see holes in her pants where she was dragged.

One of the officers was holding § 87(2)(b) arm up behind his back and § 87(2)(b) moved his arm from side to side. The officers thought § 87(2)(b) was going to run, so they slammed him against the hood of Detective Capobianco and PO2's car. At least three officers handcuffed § 87(2)(b) and about six police officers were on top of him. They did not tell him why he was being arrested. After he was handcuffed, an officer took his keys and cell phone out of his pockets and put them on top of the hood. He did not try to strike any of the officers. § 87(2)(b) was yelling and cursing, telling the officers, “Get the fuck off me.”

The officers told him that if he did not stop moving, they would put him in § 87(2)(b). One of the officers hit him in his ribs with what felt like a closed fist, and he stopped moving. At this time, § 87(2)(b) face was against the hood of Detective Capobianco and PO2's car; he was facing to his left. § 87(2)(b) was pepper-sprayed in the eyes from his left side and one of the officers pulled his hair. Officers put § 87(2)(b) inside a car; § 87(2)(b) parents, § 87(2)(b) and § 87(2)(b) arrived at this point. § 87(2)(b) asked Detective Capobianco and PO2 what happened, but they did not respond. PO2 began to curse at § 87(2)(b). At least six or seven officers followed § 87(2)(b) parents to the corner. One of the officers took out his nightstick and hit § 87(2)(b) at least once on her right arm; at this point § 87(2)(b) was across § 87(2)(b) on the southwest corner of the intersection. The officers then transported him to the precinct.

§ 87(2)(b) had an asthma attack in the car on the way to the precinct; he was having difficulty breathing and was coughing. He asked the officers to call his mother and tell her to get his asthma pump; they refused to call her and did not tell her to get the pump until she later arrived at the precinct and spoke to the officers. When his mother returned to the precinct with the pump, § 87(2)(b) took his asthma medication, ten or fifteen minutes after he had the asthma attack.

An ambulance arrived at the precinct for § 87(2)(b). § 87(2)(b) had two "knocks" on the right side of his head and a bruise to the left side of his face by his eye; he also had a "hole" from a "cane" on the right side of his knee. § 87(2)(b) had a similar injury on one of her legs.

**Victim:** § 87(2)(b)

- § 87(2)(b) is a Hispanic male, age § 87(2)(b), 5'9" tall and 160 lbs. with black hair and brown eyes.

**CCRB Testimony**

On October 22, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 4A-F).

On October 10, 2010 around 7:00 p.m., § 87(2)(b) had just parked his car in front of § 87(2)(b) and was walking to the house when a bunch of kids ran up to him and said the police were down the block and had his stepson, § 87(2)(b). § 87(2)(b) ran to § 87(2)(b). He saw a boy who was not his son lying on his stomach or side on the ground; he was covering his face and was surrounded by officers who appeared to be kicking him. He also saw a girl nearby being dragged on the ground. § 87(2)(b) later saw her in the precinct with holes on her pant legs which appeared to be a result of being dragged.

§ 87(2)(b) then saw § 87(2)(b) inside a police car. His face and neck were red and it looked like he could not breathe; his eyes looked irritated. It looked as if he had been pepper sprayed, and his hair appeared to have been grabbed. § 87(2)(b) asked the officers present if they had touched § 87(2)(b) and told them that he was asthmatic and had a heart murmur. One of the officers told § 87(2)(b) "Get the fuck off the corner before I take you in." This officer, identified through investigation as Detective Capobianco, was a white male in his late 40s, approximately 5'8" with white hair and medium build.

The officers pulled out their sticks, and § 87(2)(b) started to walk away. § 87(2)(b) did not try to open the car door or push any officers. About ten officers followed him, all male and mostly white. A couple of Hispanic officers were also present; § 87(2)(b) did not notice any black officers. Approximately six police cars were present on the scene.

§ 87(2)(b) saw an officer who is the brother of a friend. This officer, identified through investigation as Officer Estevez, was a bald, light-skinned Puerto Rican male in his mid-30s, 5'6" and lean but muscular. Officer Estevez began to try to speak to him and his wife but at the same time, another officer named Sanchez persisted in trying to get § 87(2)(b) and § 87(2)(b) to move back. Officer Sanchez grabbed § 87(2)(b). She asked why he was grabbing her, and he then hit her with his nightstick. Officer Sanchez was a dark-skinned Hispanic male. § 87(2)(b) pushed him back and asked why he had hit her. Officer Estevez said the situation was getting out of hand and told § 87(2)(b) and § 87(2)(b) to go the precinct and they could find out there what was going on with their son.

§ 87(2)(b) and § 87(2)(b) drove to the precinct with their two young children. When they entered, before they could ask any questions, one of the officers, identified as Officer Fundaro, said, "Get the fuck out." § 87(2)(b) described Officer Fundaro as a white male in his late 40s with reddish-blond hair and glasses, approximately 5'7" and 200 lbs. Six or seven officers followed them out, including Officer Sanchez.

Once outside the precinct, Officer Sanchez wrote § 87(2)(b) a ticket for parking in front of a fire hydrant. § 87(2)(b) then called IAB to file a complaint about the incident. When the other boy's parents and the girl's parents arrived at the precinct, they were also told, "Get the fuck out." The other parents waited outside the precinct with § 87(2)(b) and § 87(2)(b).

Approximately half an hour after § 87(2)(b) and § 87(2)(b) arrived at the precinct, an officer came out and told § 87(2)(b) and § 87(2)(b) to get § 87(2)(b) asthma pump, which they did. They returned to the precinct five or ten minutes later with the pump, gave it to one of the officers, and continued to wait outside the precinct.

About an hour after § 87(2)(b) and § 87(2)(b) arrived at the precinct, Officer Estevez spoke with Officer Fundaro and got him to come out of the precinct and talk to them. Officer Fundaro told them that their son was being charged with assaulting a police officer. § 87(2)(b) told the officer that his son might have a smart mouth, but he would not assault an officer. Officer Fundaro made comments about how § 87(2)(b) and § 87(2)(b) were raising their kids and said that § 87(2)(b) and the other kids were talking about getting revenge. Officer Fundaro also said the kids would be sent to § 87(2)(b).

§ 87(2)(b) was not released until after midnight; he had marks on his wrists from the handcuffs for three days afterward. At no point did § 87(2)(b) or § 87(2)(b) use profanity.

**Complainant/Victim:** § 87(2)(b)

- § 87(2)(b) is a Hispanic female, age § 87(2)(b), 5'3" tall and 155 lbs. with black hair and brown eyes.

**CCRB Testimony**

On October 22, 2010, § 87(2)(b) was interviewed at the CCRB (encl. 5A-D).

On October 10, 2010 around 7:00 p.m., § 87(2)(b) was told that police officers were hitting her son, § 87(2)(b). She and her husband, § 87(2)(b) arrived at § 87(2)(b). She saw § 87(2)(b) on the ground; officers were punching him in the ribs. He was in handcuffs and was then thrown into a police car. His girlfriend was screaming that he was a minor and telling the officers to leave him alone. It looked like she was being dragged because her pants were ripped and were around her knees; she was also thrown into a police car.

§ 87(2)(b) then saw her son, § 87(2)(b) inside a police car. His face was red and he was crying. She tried to find out from the officers present what was happening. A male officer said, “If you want to fucking know what the fuck is going on with your child, go to the fucking precinct and you will find out.” § 87(2)(b) told him that she needed to know why her son had been arrested and why officers had hit him, and the officer told her to walk away.

At least six police cars were present at the scene and more than twenty civilians were also present watching. Officers were telling all of the people present, “Get the fuck off the corner.”

An officer who is a friend of § 87(2)(b) identified as Officer Estevez, saw § 87(2)(b) and § 87(2)(b) and told the officers that they were family and to let him talk to them. At the same time, an officer named Sanchez said to § 87(2)(b) “Didn’t I tell you to keep fucking moving?” § 87(2)(b) told him she was talking to the other officer and asked him why he was talking to her like that. Officer Sanchez then got out his asp and hit § 87(2)(b) on the right forearm. The blow stung but did not cause significant pain and did not leave a mark. § 87(2)(b) pushed him away. Officer Estevez then told § 87(2)(b) and § 87(2)(b) that they should go the precinct.

They drove to the precinct and parked in front of a fire hydrant; on the way to the precinct, § 87(2)(b) called 911 to report the incident. The parents of § 87(2)(b) and his girlfriend arrived at the precinct as well. While § 87(2)(b) waited with the car, § 87(2)(b) and the other parents went inside the precinct. One of the officers said to them, “Everybody get the fuck out of my fucking precinct,” and the parents left the precinct.

§ 87(2)(b) was telling § 87(2)(b) what had happened and that he should move the car when Officer Sanchez and a white male officer named Capobianco told them not to worry about the car and that they would not receive a ticket; however, Officer Sanchez later wrote § 87(2)(b) a parking ticket. § 87(2)(b) then went back into the precinct and asked what was going on with her son, but an officer told her to step outside and wait there.

§ 87(2)(b) then called 911 and told the operator that she was in front of the precinct and no one would tell her what was going on with her son. The operator told her to go back inside and ask what was happening. § 87(2)(b) did so, and an officer said to her, “Didn’t we fucking tell you to get out of the fucking precinct?”

§ 87(2)(b) asked Detective Capobianco to check on her son because he had asthma. He went to check, then came back and told her that it looked like he was having an asthma attack and asked what she suggested they do. She asked if they could call an ambulance, but he said it did not look that serious and asked her to go home and get his asthma pump, which she did.

§ 87(2)(b) eventually left the precinct in an ambulance because he was more seriously injured; he was taken to § 87(2)(b). His mother has pictures of his injuries. His girlfriend was released next. § 87(2)(b) was released to his parents outside the precinct after midnight.

§ 87(2)(b) did not use any profanity or make any physical provocation toward the officers.

### **Attempts to Contact Civilians**

Addresses for § 87(2)(b) and § 87(2)(b) were obtained from the command log; three letters were sent to each address between November 8, 2010 and November 19, 2010. § 87(2)(b) also gave the undersigned investigator's contact information to § 87(2)(b)'s mother.

One of the letters to § 87(2)(b) were returned to the CCRB with the label "No Mail Receptacle, Unable to Forward"; the other two were returned with the label "Attempted: Not Known – Unable to Forward." The letters to § 87(2)(b) were not returned; however, neither he nor his mother contacted the CCRB. Searches of the Department of Corrections website on January 3, 2011 confirmed that neither § 87(2)(b) nor § 87(2)(b) is currently incarcerated.

### **NYPD Statements:**

#### **Subject Officer: DETECTIVE JOHN CAPOBIANCO**

- *Detective Capobianco is a white male, § 87(2)(b) 5'9" tall and 175 lbs. with gray hair and blue eyes.*
- *On October 10, 2010, Detective Capobianco worked from 4 p.m. to midnight; he was assigned to Sector B, dressed in uniform, and worked in an RMP with Officer Angel Vasquez.*

#### **Memo Book**

Detective Capobianco has the following memo book entries regarding the incident: 6:56 p.m.: One male stopped on northeast corner of § 87(2)(b). Individual observed standing in middle of intersection blocking vehicular traffic. Individual, when questioning regarding presence on street, began to use profanities, creating alarm and causing a crowd to develop. Individual brought to RMP for further inquiry when individual turned towards responding sergeant and began cursing and moving hands about. Individual was transported to stationhouse. Male identified as § 87(2)(b).

### **CCRB Testimony**

Detective Capobianco was interviewed at the CCRB on December 28, 2010 (encl. 6A-G).

Detective Capobianco and Officer Vasquez received a call for assistance from Sergeant Michael Gibbs, who had stopped someone on a motorbike and had made an arrest. When the officers arrived, Sergeant Gibbs had the arrestee under control and asked them to secure the motorbike, which was at a construction site about a block away. The officers went to the location and did not see the motorbike, but saw tire marks where it had been.

The officers looked around for the bike, and Detective Capobianco saw a young man, identified through investigation as § 87(2)(b) following him and looking around. Because they could not find the bike, the officers got back in their car and drove to the corner of § 87(2)(b). § 87(2)(b) stood in the middle of the street, went to look in an alleyway, a driveway, and the vestibule of a building, then went back to the middle of the street, blocking the officers' car.

From inside his car, Detective Capobianco asked § 87(2)(b) if he had lost something or was looking for something. § 87(2)(b) responded, "Fuck you" and said the detective was harassing him. Detective Capobianco asked again if § 87(2)(b) had lost something and told him not to stand in the middle of the street. § 87(2)(b) said, "Go fuck yourself." Detective Capobianco then got out of the car and asked § 87(2)(b) for his name and address; he gave his address and first name. Detective Capobianco asked for his last name, and § 87(2)(b) told him, "You're starting to



fucking piss me off.” The detective asked him how old he was, and § 87(2)(b) responded that he was old enough to sue him.

Detective Capobianco got on the radio and told Sergeant Gibbs that he had someone the sergeant might be interested in because he appeared to be looking for something. The detective then asked § 87(2)(b) to stay until the sergeant came, which he agreed to do. He was free at that point to leave if he wished. Sergeant Gibbs arrived, and Detective Capobianco got back in his car and ran a warrant check on § 87(2)(b). Officer Vasquez was outside the car with the sergeant.

He looked up and saw that § 87(2)(b) had his hands on the sergeant’s upper body. § 87(2)(b) was then handcuffed, but Detective Capobianco did not see which officers handcuffed him. The § 87(2)(b) was screaming and went limp because he did not want to be put inside the vehicle. Officers opened the door of the car and put him in. They shut the door, and § 87(2)(b) kicked at the car window. Detective Capobianco told him to stop. § 87(2)(b) tried to open the door with his mouth and continued kicking the window. Detective Capobianco does not know which officers placed § 87(2)(b) in the car.

From inside the car, Detective Capobianco saw that more than ten people had gathered; some were throwing rocks, bricks, dirt, and other debris. He saw Sergeant Gibbs on the ground with someone flying over his head or kicking him, and Officer Gaetano Fundaro was on the ground rolling with someone; but Detective Capobianco could not see exactly what physical interaction was involved. Many officers were present, but Detective Capobianco does not know specifically which other officers were there. § 87(2)(b) was still kicking the window, screaming and cursing.

Detective Capobianco remained inside the car and did not have any verbal or physical interaction with anyone else on the scene. To his knowledge, no pepper spray was used by any officer; nor did any officer punch or kick anyone, pull anyone’s hair, slam anyone against a car, drag anyone on the ground, or take out or use their asp or baton. He did not use any profanity, and he did not hear any other officers use profanity.

Detective Capobianco and Officer Vasquez then took § 87(2)(b) to the precinct. When they arrived, § 87(2)(b) was breathing heavily and Detective Capobianco asked him if he had asthma. He said yes, and Detective Capobianco went to the main entrance, found § 87(2)(b) mother and asked her to go home and get his asthma medication. She did so, and the medication was administered to him. Neither he nor his mother asked for additional medical attention.

Detective Capobianco also spoke to § 87(2)(b) father, who said that his son had been having problems. Both of the parents were calm and apologetic. Detective Capobianco did not tell them to leave the precinct or use any profanity towards them; nor did he hear any other officer do so.

There was another young man in the juvenile room who had been arrested, identified through investigation at § 87(2)(b) was examined by a paramedic at the precinct, but Detective Capobianco did not see him at the scene and does not know which officers brought him in. The paramedic also asked § 87(2)(b) if he was okay, and § 87(2)(b) said he did not need any medical attention. Detective Capobianco does not remember seeing § 87(2)(b) at the precinct.

**Subject Officer: OFFICER ANGEL VASQUEZ**

- *Officer Vasquez is a § 87(2)(b)-old Hispanic male, 5'10" tall and 190 lbs. with salt-and-pepper hair and brown eyes.*
- *On October 10, 2010, Officer Vasquez worked from 3:00 p.m. to 11:35 p.m. He was working in uniform in RMP #4618 in Sectors B and C with Detective John Capobianco as his partner.*

**Memo Book**

Officer Vasquez has the following memo book entries regarding the incident: At 6:54 p.m., responded to sergeant's call for backup on § 87(2)(b). Was told to recover motorcycle on § 87(2)(b); motorcycle was gone. Observed individual in the middle of intersection impeding vehicular traffic. Perp was told and asked general questions regarding presence on the street and began to use profanities at us, creating and causing a large crowd to gather around us. Called for backup and perp did turn to sergeant and did curse and pushed him. Perp did resist and tackled arresting officer. Perp then placed under arrest and transported to stationhouse.

**CCRB Testimony**

Officer Vasquez was interviewed at the CCRB on December 1, 2010 (encl. 7A-F). § 87(2)(g)

When Officer Vasquez and Detective Capobianco called for assistance with § 87(2)(b) Sergeant Gibbs and Officer Fundaro came and the sergeant began to talk to § 87(2)(b) turned around, cursed, and pushed against Sergeant Gibbs' chest with both hands. He was then placed under arrest; no officer punched him, pulled his hair, or slammed him against the hood of a car, and no pepper spray was used.

Officer Vasquez told people to back off. Later, the mother of one of the arrestees arrived; Sergeant Gibbs and Detective Capobianco told her what was going on and to go to the precinct.

While performing crowd control, Officer Fundaro spoke to one individual in particular, identified through investigation as § 87(2)(b) and told him to back off. § 87(2)(b) tackled him football-style by the legs or waist; Officer Fundaro was on the ground. Officers came to assist Officer Fundaro; they held § 87(2)(b) by the arms, took him off Officer Fundaro, and placed him under arrest. Officer Vasquez was not involved with this arrest; by the time he arrived to assist Officer Fundaro, § 87(2)(b) was already under arrest.

§ 87(2)(b) did not have an asthma attack in the car or later at the precinct; his physical condition and breathing were normal.

**Subject Officer: SERGEANT MICHAEL GIBBS**

- *Sergeant Gibbs is a § 87(2)(b)-old white male, 5'11" tall and 170 lbs. with hazel eyes and brown hair; he has a receding hairline.*
- *On October 10, 2010, Sergeant Gibbs worked as patrol supervisor with Officer Fundaro from 2:40 p.m. to 11:47 p.m. He was dressed in uniform and assigned to a motor vehicle.*

**Memo Book**

Sergeant Gibbs has the following memo book entries regarding the incident: At 7:15 p.m., four under at corner of § 87(2)(b).

**CCRB Testimony**

Sergeant Gibbs was interviewed at the CCRB on December 14, 2010 (encl. 8A-E). § 87(2)(g)

While on patrol, Sergeant Gibbs and Officer Fundaro saw a young man, identified through investigation as § 87(2)(b), riding a dirt bike on the street. § 87(2)(b) fell off the motorbike and started to run.

Sergeant Gibbs and Officer Fundaro arrested § 87(2)(b) and placed him in their vehicle. The officers radioed for another car to retrieve the motorbike. They got in their vehicle, drove back to the location where the bike had landed, and saw that Detective Capobianco and Officer Vasquez had arrived in another patrol car and had stopped another young man, identified through investigation as § 87(2)(b) whose clothing was covered in grease. He was not in custody or cuffed; he was outside the car and speaking to one of the officers; who was asking where the bike was. They were not having any physical interaction.

Sergeant Gibbs and Officer Fundaro did not speak to § 87(2)(b). At no point was Sergeant Gibbs attacked by § 87(2)(b) nor did he see him attack any other officer.

Officer Fundaro was then tackled by a male in the crowd that had gathered; the male was identified through investigation as § 87(2)(b). A female, identified as § 87(2)(b) started to move towards Officer Fundaro and § 87(2)(b) and Officer Gibbs instructed her to stop. She refused, and Sergeant Gibbs grabbed her hand and told her to step back. She still refused, and Sergeant Gibbs attempted to handcuff her.

§ 87(2)(b) resisted, and after Sergeant Gibbs got one cuff on her, one or both of them lost their footing and they fell to the ground. As they were on the ground and Sergeant Gibbs attempted to get the other cuff on her, the crowd moved in towards them. At some point during his struggle with § 87(2)(b) Sergeant Gibbs called for additional units; six to eight officers arrived but he does not know specifically who was present. He was the only supervisor on the scene.

An adult male from the crowd began stomping on Sergeant Gibbs' left knee as he was on the ground with § 87(2)(b). At the same time, a young child kicked him repeatedly in the back of his head. Sergeant Gibbs does not know who the adult male or the child were. Sergeant Gibbs struggled with § 87(2)(b) for approximately a minute before he was able to handcuff her other hand; he was also able to move his leg out of the way of the adult male and push the child back.

As a result of the incident, Sergeant Gibbs sustained injuries to his left knee, right hand, and right index finger and thumb of his left hand. The injuries to his hands were probably received when he fell to the ground attempting to cuff § 87(2)(b) and the injury to his knee was from the individual stomping on his leg. Sergeant Gibbs took line of duty sick leave for his injuries; he received medical treatment from his private practitioner as well as at § 87(2)(b).

**Subject Officer: OFFICER GAETANO FUNDARO**

- Officer Fundaro is a § 87(2)(b)-old white male, 5'11" tall and 185 lbs. with brown hair and eyes.
- On October 10, 2010, Officer Fundaro worked from 7:00 p.m. to 11:35 p.m. as Sergeant Gibbs' operator. He was dressed in uniform and assigned to a marked RMP.

# Memo Book

Officer Fundaro has the following memo book entries regarding the incident:

6:55 p.m.: Observed defendant, Hispanic male, on black motorcycle on public sidewalk on § 87(2)(b) operating without a license plate or helmet, dodging in and around pedestrians on sidewalk, causing a near collision with a newborn and mother. Defendant fled scene, dumping motorcycle on corner of § 87(2)(b) § 87(2)(b), and fled on foot to § 87(2)(b).

7:00 p.m.: One under inside of § 87(2)(b), identified as § 87(2)(b). Defendant transported by unit assigned to Sector A.

7:05 p.m.: Call for backup at corner of § 87(2)(b). Disorderly male.

7:06 p.m.: Arrived at scene with Sergeant Gibbs. Officer Vasquez and Detective Capobianco with one male stopped, large disorderly group surrounding officers.

7:10 p.m.: Call for backup; youths fighting and throwing bricks from rooftop towards responding units. Perp did knock down arresting officer to floor in public street and resist arrest. Second perp did swing and sergeant and fought arresting officer.

7:12 pm.: Air mail and large group; call for assistance.

7:15 p.m.: Three under, transport one female Hispanic to 41<sup>st</sup> Precinct.

§ 87(2)(a) FCT § 380.1

10:57 p.m.: Summons issued to defendant § 87(2)(b) date of birth § 87(2)(b), for § 87(2)(a) FCT § 380.1. Released with instruction of return date.

11:25 p.m.: § 87(2)(a) FCT § 380.1. Refused medical attention with

parents present at 41<sup>st</sup> Precinct. § 87(2)(a) Fam. Ct. Act § 381.3  
§ 87(2)(b) En route to § 87(2)(b). Sustained neck/back/right arm/shoulder injury at § 87(2)(b)  
§ 87(2)(b).

### **CCRB Testimony**

Officer Fundaro was interviewed at the CCRB on December 6, 2010 (encl. 9A-J). § 87(2)(g)  
§ 87(2)(b) :

When Officer Fundaro and Sergeant Gibbs responded to Officer Vasquez' and Detective Capobianco's call for assistance, the officers were struggling with an individual, identified as § 87(2)(b). § 87(2)(b) was attempting to punch Detective Capobianco. Officer Fundaro did not have any interaction with § 87(2)(b). § 87(2)(b) was cuffed and put in the car. He repeatedly kicked the car window; he also kicked Sergeant Gibbs in the face.

Another male, identified as § 87(2)(b) approached the officers and was told to step back. He repeatedly came back, screaming, "Fuck you, that's my boy." Officer Fundaro told him that if he was concerned about his friend, he would have to talk to his parents or go to the precinct. He then heard a female, identified as § 87(2)(b) screaming "Fuck the police" and "You motherfuckers." Officer Fundaro turned his head, and § 87(2)(b) punched him and tackled him by the legs to the ground. Two or three other officers came to assist Officer Fundaro; they put § 87(2)(b) in a vehicle. He did not see exactly how the officers restrained § 87(2)(b). Officer Fundaro did not see any force used against § 87(2)(b).

Officer Fundaro and Sergeant Gibbs returned to the stationhouse. Officer Fundaro spoke to the § 87(2)(b) mother and to § 87(2)(b) parents; all of the parents were calm and understanding when speaking to him.

Officer Fundaro did not see any of the arrestees' family members being disorderly or being told to leave the precinct, but he was not with them the entire time because he was also dealing with the arrestees. No officers used profanity towards the parents at the precinct.

Officer Fundaro § 87(2)(b) went to § 87(2)(b) and was prescribed Oxycodone. He took line of duty sick leave.

### **Subject Officer: OFFICER LAWRENCE SANCHEZ**

- *Officer Sanchez is a Hispanic male, § 87(2)(b), 5'6" tall and 140 lbs. with black hair and brown eyes.*
- *On October 10, 2010, Officer Sanchez worked from 3:00 p.m. to 11:35 p.m. He was working in uniform in a motor vehicle in sectors E, F, and I with Officer Emilio Estevez.*

### **Memo Book**

Officer Sanchez has the following memo book entries regarding the incident: At 7:02 p.m., received call for additional unit in Sector A at § 87(2)(b). At 7:03 p.m., arrived at scene. At 7:20 p.m., resumed patrol; three arrests by the unit in Sector A.

### **CCRB Testimony**

Officer Sanchez was interviewed at the CCRB on December 1, 2010 (encl. 10A-E). § 87(2)(g)  
§ 87(2)(b) :

Officers Sanchez and Estevez responded to Sergeant Gibbs' call for assistance, but experienced mechanical problems with their vehicle on their way. By the time they arrived, the situation was under control; three individuals had been arrested and were already in vehicles. He and Officer Estevez were at the scene for a minute or less. Officer Sanchez did not speak to any civilians at the scene; he did not use any profanity or hear any other officer use profanity. Officer Sanchez did not take out his asp or baton and did not hear anyone at the scene say that they were relatives of the arrestees.

The officers returned to the stationhouse. A group of people came in yelling in an aggressive manner; Officer Sanchez does not remember what they were saying and does not know what they wanted. He, Sergeant Padilla, Officer Estevez, and other officers asked them to leave and come in after they had calmed down. None of the officers used profanity towards the civilians.

Officer Sanchez issued a parking summons to a family member of one of the arrestees § 87(2)(b)

**Subject Officer: OFFICER EMILIO ESTEVEZ**

- *Officer Estevez is a § 87(2)(b)-old Hispanic male, 5'8" tall and 149 lbs. with black hair and eyes.*
- *On October 10, 2010, Officer Estevez worked from 3:00 p.m. to 11:35 p.m. with Officer Sanchez. They were assigned to sectors E, F, and I and worked in uniform in an RMP.*

**Memo Book**

Officer Estevez has the following memo book entries regarding the incident: At 7:02 p.m., responded to call for additional unit in Sector A at § 87(2)(b). At 7:03 p.m., arrived at location. At 7:20 p.m., resumed patrol; three arrests made by unit in Sector A.

**CCRB Testimony**

Officer Estevez was interviewed at the CCRB on December 10, 2010 (encl. 11A-F). § 87(2)(g)

**Subject Officer: SERGEANT EDGAR PADILLA**

- *Sergeant Padilla is a white male, 6'0" tall and 195 lbs., age § 87(2)(b) with black hair and brown eyes.*
- *On October 10, 2010, Sergeant Padilla worked from 4 p.m. to midnight as desk officer.*

**Memo Book**

Sergeant Padilla has no entries in his memo book regarding this incident.

**CCRB Testimony**

Sergeant Padilla was interviewed at the CCRB on December 9, 2010 (encl. 12A-E).

Three arrestees were brought into the precinct. The parents of the arrestees and people from the neighborhood came to the precinct in a large group of twelve to fifteen people. The group was very belligerent and upset and wanted to know what was going on. Sergeant Padilla asked who in the group were parents of the arrestees, and they identified themselves. He told the parents to have a seat and told everyone else to leave because they did not need to be there. The parents were never asked to leave the precinct and they were not disorderly. Officer Fundaro and Sergeant Gibbs also told people to leave. None of the officers used any profanity.

## **NYPD Documents**

### **Line of Duty Injury Reports (encl. 17A-F)**

Line of duty injury reports were filed by Sergeant Gibbs and Officer Fundaro.

§ 87(2)(b)

§ 87(2)(b)

Sergeant Gibbs and Officer Fundaro provided witness statements for each others' reports; both were treated at § 87(2)(b).

### **Command Log (encl. 16A-F)**

The 41<sup>st</sup> Precinct command log indicates that at 7:20 p.m. on the date of the incident, § 87(2)(b), § 87(2)(b), and § 87(2)(b) were brought in by Officer Fundaro. § 87(2)(b) physical/mental condition is noted as "apparently normal," § 87(2)(b) as "apparently normal/scraped right knee," and § 87(2)(b) as "bruised knee/laceration to face." According to the command log, none of the arrestees requested medical attention.

### **Status of Civil Proceedings (encl. 18A)**

§ 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 25, 2011 with regard to the incident.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian CCRB History (encl. 1I)**

This is the first CCRB complaint filed by § 87(2)(b) § 87(2)(b)

### **Subject Officer CCRB History**

- Detective Capobianco has been a member of the service for 28 years and there are no substantiated CCRB allegations against him (encl. 1A).
- Sergeant Gibbs has been a member of the service for 16 years. In CCRB case #200203078, three allegations against him of physical force, threat of arrest, and issuance of a retaliatory summons were substantiated; the charges were subsequently dismissed. There are no other substantiated CCRB allegations against him (encl. 1B-D).
- Officer Sanchez has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 1E).
- Officer Vasquez has been a member of the service for 14 years and there are no substantiated CCRB allegations against him (encl. 1F-G).

- Officer Fundaro has been a member of the service for 17 years and there are no substantiated CCRB allegations against him (encl. 1H).

### Conclusion

#### Identification of Subject Officers

- Detective Capobianco and Officer Vasquez admitted to approaching and questioning § 87(2)(b) § 87(2)(g).
- § 87(2)(b) did not see the officers who he alleged used physical force and pepper spray against him, and no officer admitted to physically interacting with him. § 87(2)(g)
- Sergeant Gibbs admitted to physically interacting with § 87(2)(b) § 87(2)(g)
- § 87(2)(b) gave the name of the officer who she alleged used force against her and spoke discourteously to her as Sanchez. She obtained Officer Sanchez' name from a parking summons that he later wrote § 87(2)(b) § 87(2)(g)
- Detective Capobianco fits § 87(2)(b)'s description of one of the officers who he alleges used profanity towards him. § 87(2)(g)
- Officer Fundaro acknowledged that he spoke to § 87(2)(b) and § 87(2)(b) and he fits § 87(2)(b)'s description of one of the officers who allegedly used profanity towards them at the 41st Precinct stationhouse. § 87(2)(g)
- The civilians interviewed alleged that multiple other officers used profanity towards them at § 87(2)(b) as well as inside the 41<sup>st</sup> Precinct stationhouse. § 87(2)(g)

#### Investigative Findings and Recommendations

**Allegation A – Abuse of authority: Detective John Capobianco stopped** § 87(2)(b)

**Allegation B – Abuse of authority: Officer Angel Vasquez stopped** § 87(2)(b)

§ 87(2)(b) alleged that he was stopped by two officers. Detective Capobianco and Officer Vasquez admitted to questioning him about a missing motorbike and asking him to stay until Sergeant Gibbs arrived, but according to Detective Capobianco, § 87(2)(b) was free to leave.

§ 87(2)(g), § 87(2)(b)

**Allegation C – Force: Officers used physical force against** § 87(2)(b)

**Allegation D – Force: Officers used pepper spray against** § 87(2)(b)



§ 87(2)(b) alleged that officers slammed him against the hood of a car, punched him in the ribs, pulled his hair, and used pepper spray against him. § 87(2)(b) stated that when he saw § 87(2)(b) at the scene, his face and neck were red, his eyes looked irritated, his hair looked as if it had been grabbed, and he appeared to have difficulty breathing. § 87(2)(b) stated that when she saw § 87(2)(b) at the scene, his face was red and he was crying. § 87(2)(b) and Detective Capobianco both stated that § 87(2)(b) had difficulty breathing on the way to or at the precinct due to asthma and was given his inhaler.

§ 87(2)(b) did not see any of the officers who he alleged used force against him. Detective Capobianco, Officer Vasquez, Sergeant Gibbs, and Officer Fundaro acknowledge that they were present at the time § 87(2)(b) was arrested. However, they all denied having any physical interaction with § 87(2)(b) or seeing any other officer use physical force or pepper spray against him; nor did they see who handcuffed him and placed him in the car. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Force: Sergeant Michael Gibbs used force against § 87(2)(b)**

**Allegation F – Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)**

The civilians interviewed stated that officers punched § 87(2)(b) and dragged § 87(2)(b) on the ground. Sergeant Gibbs acknowledged that he had a physical interaction with § 87(2)(b). § 87(2)(g), § 87(2)(b)

§ 87(2)(g)

**Allegation G – Force: Officer Lawrence Sanchez used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that Officer Sanchez struck her on the arm with his asp. § 87(2)(b) and § 87(2)(b) stated that they saw Officer Sanchez hit her with his nightstick. Officer Sanchez denied taking out his asp or nightstick or interacting with any civilians at the scene. All other officers denied seeing any officer use an asp or nightstick.

§ 87(2)(g)

**Allegation H – Discourtesy: Officer Lawrence Sanchez spoke rudely and/or discourteously to § 87(2)(b)**

**Allegation I – Discourtesy: Detective John Capobianco spoke rudely and/or discourteously to § 87(2)(b)**

**Allegation J – Discourtesy: Officer Gaetano Fundaro spoke rudely and/or discourteously to § 87(2)(b) and § 87(2)(b)**

§ 87(2)(b) alleged that Detective Capobianco told him, “Get the fuck off the corner before I take you in.” § 87(2)(b) alleged that Officer Sanchez said to her, “Didn’t I tell you to keep fucking moving?” § 87(2)(b) also alleged that when he and § 87(2)(b) entered the 41<sup>st</sup>

Precinct stationhouse, Officer Fundaro told them, “Get the fuck out.” All of the officers interviewed denied using profanity or hearing other officers use profanity.

§ 87(2)(g)

**Allegation K – Discourtesy: Officers spoke rudely and/or discourteously to** § 87(2)(b)

**and** § 87(2)(b)

§ 87(2)(b) alleged that at § 87(2)(b), an officer asked him if he knew where “the fucking bike” was and that he later heard an officer cursing at people to get off the corner.

§ 87(2)(b) alleged that an officer told her, “If you want to fucking know what the fuck is going on with your child, go to the fucking precinct and you will find out.” She further alleged that multiple officers were telling everyone at the scene, “Get the fuck off the corner.”

§ 87(2)(b) and § 87(2)(b) also alleged that when they and other parents of the arrestees inquired about their children at the 41<sup>st</sup> Precinct stationhouse, multiple officers used the word “fuck” towards them. All officers interviewed denied using profanity or hearing other officers use profanity.

§ 87(2)(g), § 87(2)(b)

Team: \_\_\_\_\_

:

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date